



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
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March 20, 2015

To: The Honorable Mark M. Nakashima, Chair,  
The Honorable Jarrett Keohokalole, Vice Chair, and  
Members of the House Committee on Labor & Public Employment

Date: Friday, March 20, 2015  
Time: 9:30 a.m.  
Place: Conference Room 309, State Capitol

From: Elaine N. Young, Acting Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.C.R. 168/ H.R.104 Requesting the Department of Labor and Industrial Relations to Convene a Working Group to Streamline the State's Workers' Compensation Process.**

**I. OVERVIEW OF PROPOSED LEGISLATION**

H.C.R. 168 and H.R. 104 requests the Department of Labor and Industrial Relations to convene a working group to streamline the State's workers' compensation process under chapter 386, Hawaii Revised Statutes. The Department strongly supports the measures as the best means to obtain input from the affected stakeholders in the effort to modernize the workers' compensation system.

The Director of DLIR or the Director's designee shall serve as Chairperson and the working group shall include the following:

- 1) Insurers that issue workers' compensation insurance policies in the State;
- 2) Attorneys who represent employers and employees in workers' compensation claims;
- 3) A representative of a mutual benefit society operating in the State;
- 4) A representative of a health maintenance organization operating in the State;
- 5) Health care providers;
- 6) Any other persons deemed appropriate by the Chairperson of the working group;
- 7) One person appointed by the President of the Senate; and

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8) One person appointed by the Speaker of the House of Representatives.

The working group shall submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2016.

The Legislature further requests that the working group consider streamlining the filing process for workers' compensation claims by converting to a computerized system.

## **II. CURRENT LAW**

There is no current statute or working group organized to streamline the workers' compensation process.

Section 12-10-61(d), Hawaii Administrative Rule, pertaining to Filing of reports, allows electronic submission of reports.

## **III. COMMENTS ON THE HOUSE CONCURRENT RESOLUTION**

The Department strongly supports HCR 168/HR 104 to organize a working group of interested parties to improve the processing of workers' compensation claims and decisions and to streamline the workers' compensation process. Such a working group will help the Department fulfill the purposes of the workers' compensation law: to ensure timely payment of wage loss benefits and medical care to the injured worker to assist them in returning to work as quickly as possible.

The Department requests the Committee consider the following amendments:

1. That the working group be given more time to provide input, therefore, the Department requests the report to the Legislature be provided before the 2017 session.
2. Due to the importance of the matter, the DLIR also requests amending the measure to ensure that either the Director or Deputy is directly involved in the working group i.e. strike "Director's designee" and add "or the Deputy."
3. DCD will also require additional staffing (at least one IT staff) and funding and expert help in converting to a computerized system.

The purpose of the workers' compensation law is to ensure timely payment of wage loss benefits and medical care to the injured worker to assist them in returning to work as quickly as possible. The DCD is almost exclusively reliant on paper processes that include filing of the initial claims, interim medical reports, carrier's reports and attorney correspondences, requests for hearings, and Independent Medical Exam (IME) orders. The documents received must be

manually time stamped, referred to the proper sections to handle, matched and filed in the claimant's case files, and pertinent information inputted into computers.

Since 2008, DCD has lost about 31% of its staff due to the State mandated reduction in force, retirements, and not being allowed to hire additional staffing due to insufficient funding. This resulted in a tremendous backlog in filing, reviewing issues for hearings, scheduling of hearings, issuing of decisions, checking on compliance issues, reviewing and approving settlement documents, etc. It often would take about 6 to 9 months to schedule a case for hearings. During this time, billing dispute issues were assigned to the Hearings Branch and there was a 2,000 case backlog as of January 2013.

The Enforcement Branch also has lost 10 positions due to reduction in force and retirements and was assigned processing of Certificates of Compliance which increased more than 3 times by 2014. Investigators had to do more clerical work and had less time to monitor and enforce compliance with the temporary disability insurance (TDI), workers' compensation (WC), and prepaid health care (PHC) laws, resulting in a 58% increase in non-complying employers from 2008 to 2014.

The resolution states that injured claimants have complained that scheduling an IME can take longer than a year despite repeated requests and inquiries. Scheduling an IME is usually done by the insurance carrier and not by the DCD. The IME assists the carrier in determining compensability of the claim, gives another doctor's opinion on treatment, and provides a rating to determine permanent partial disability benefits.

Delays in approving settlement documents are both due to lack of staff or errors as well as omissions in the agreement, resulting in the settlement document being sent back to the carrier for corrections. Payments following the approval of a settlement agreement usually are made within 30 calendar days after approval of the agreement or as soon thereafter as possible.



**STATE OF HAWAII**  
**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
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March 18, 2015

**TESTIMONY TO THE  
HOUSE COMMITTEE ON LABOR**

For Hearing on Friday, March 20, 2015  
9:30 a.m., Conference Room 309

BY

JAMES K. NISHIMOTO  
DIRECTOR

**House Concurrent Resolution No. 168 and  
House Resolution No. 104  
Requesting the Department of Labor and Industrial Relations  
to Convene a Working Group to Streamline  
the State's Workers' Compensation Process**

**WRITTEN TESTIMONY ONLY**

TO CHAIRPERSON MARK NAKASHIMA AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide comments on H.C.R. 168 and H.R. 104.

H.C.R. 168 and H.R. 104 both request the Department of Labor and Industrial Relations to convene a working group to streamline the State's workers' compensation process.

The Department of Human Resources Development (DHRD) has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds. In that regard, DHRD respectfully submits this comment on the resolutions.

As a public employer which is self-insured and self-administered for its workers' compensation liabilities, the State would not be deemed an "insurer[ ] that issue[s] workers' compensation insurance policies in the State" and may inadvertently be excluded as a member of the working group envisioned by these resolutions. Given the

State's unique issues and interests, we respectfully suggest that the enumerated list of working group members in the resolutions be amended as follows to expressly include the State as a member: "The Director of Human Resources Development or the Director's designee."

The Twenty-Eighth Legislature  
Regular Session of 2015

HOUSE OF REPRESENTATIVES  
Committee on Labor and Public Employment  
Rep. Mark M. Nakashima, Chair  
Rep. Jarrett Keohokalole, Vice Chair  
State Capitol, Conference Room 309  
Friday, March 20, 2015; 9:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.C.R. 168 and H.R. 104  
Requesting the Department of Labor and Industrial Relations to Convene  
a Working Group to Streamline the State's Workers' Compensation Process**

The ILWU Local 142 **supports the intent** of H.C.R. 168 and H.R. 104, which requests the Department of Labor and Industrial Relations (DLIR) to convene a working group to streamline the State's workers' compensation process, and recommends an amendment.

Hawaii's workers' compensation law was enacted in 1915 to provide wage loss compensation and medical care to workers who suffer a work-related injury. The law presumes that an injury is work-related if it arises in the course of employment or at a workplace and places the burden on the employer to provide substantial evidence to the contrary. In exchange for this presumption, a the employee is prohibited from suing the employer for work-related injuries or illnesses.

The ultimate goal is to return the injured worker to a medical status that will allow his return to employment, either with his employer or another, as soon as possible. The work injury was accidental. The law is intended to prevent further injury—physical, mental and financial—because of the accident.

For most of the past 100 years, the law has worked reasonably well. Employees generally received compensation when injured or ill due to the job while employers were free from the threat of legal action for the injury or illness. The system was not perfect and compensation often insufficient, but the process was generally fair.

However, over the past several years, the process has become increasingly adversarial. Some employers routinely deny liability for claims and drag out the process to determine compensability. As a result, needed treatment for the employee to return to work and monetary compensation to survive during the disability period are also denied to the worker. Attorneys are, more often than not, brought in to handle the claims (in addition to insurance adjusters), causing additional costs for employers and requiring employees to hire their own attorneys, which was not the original intent of the law. Worse, for the past 20 years, compensation to providers has been capped, resulting in fewer physicians and other providers willing to treat injured workers.

The ILWU supports the intent of these two resolutions to streamline the workers' compensation process. Thank you for considering our testimony.

# DENNIS W. S. CHANG

Attorney at Law, A Limited Liability Law Corporation

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

March 19, 2015

## HOUSE OF REPRESENTATIVES THE TWENTY-EIGHT LEGISLATURE REGULAR SESSION OF 2015

### COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Representative Mark M. Nakashima, Chair  
Representative Jarrett Keohokalole, Vice Chair  
Members of the Committee

DATE: Friday, March 20, 2015  
TIME: 9:30 A.M.  
PLACE: Conference Room 309  
State Capitol  
415 south Beretania Street

### STRONG SUPPORT OF HCR 168/ HR 104

I fully support HCR 168, but with the caveat that it will not be used as a convenient excuse to kill or delay the essential bills pending before the Legislature that are absolutely necessary to bring fairness, and reduce delay and litigation. There are some critical proposed bills, which should be given due consideration, and passed this legislative session.

The "whereas" portion contained in HCR 168 only touches upon some of what are the problems confronting the Workers' Compensation (WC) process for claims before the Department of Labor and Industrial Relations (DLIR). Consistent with the Grand Bargain enacted into law in 1915, the processing of claims were expedited and very informal even when I began practicing nearly four decades ago. Claims would be resolved informally and, if there were a dispute, there would be expedited hearings. Pro se workers could easily navigate their way through the DLIR alone or with union representatives (non-lawyers). Unlike today when a hearing could take up to two (2) hours, in the "good old days" hearings would take no longer five (5) to fifteen minutes.

In contrast, as I continue to practice in the WC field, the law has become increasingly complex, we are now into the fifth edition of the AMA Guides for Impairment Rating (nearly tripling in size from the first edition), employers and their representatives are retaining an increasing number of attorneys to deny and challenge claims, routinely there are more denied claims at the outset interrupting the payment of wage loss and critical medical care, and resorting to the abusive so-called "independent medical examination process, which is pending before the House of Representatives." These are only a few of the cumbersome illustrations, and understandably, the DLIR has become increasingly overwhelmed. What took five (5) or at most fifteen minutes for an informal hearing now has reached the point of becoming increasing

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adversarial and litigious. The defense industry has placed roadblock after roadblock whenever possible to prevent the prompt payment of these essential wage loss payments and critical medical care. These are constantly interrupted, which should be paid legally without delay or proceeding to a hearing before the DLIR.

I wholeheartedly welcome support having a working group with the goal of streamlining the process, including converting the system at the DLIR to a computerized system. We should be able to find common ground to have a better system.

Delay in the process is untenable. A recent study showed that a worker making \$25.00 an hour is really having only the spending power of approximately \$14.66 because of our high cost of living in Hawaii. It is no surprise that most workers live paycheck by paycheck. If we fail to streamline the process to prevent delay and have disputes heard promptly injured workers and their love ones will continue to suffer unnecessary economic ruin and emotional distress. HCR 168 is intended to explore and rectify this.

The working group should explore what rules and procedures can be dispensed with or adopted to expedite the processing of disputed WC claims. However, this may be a fruitless exercise, if the Legislature is not serious in providing funding. We have gone through crisis after crisis with positions left unfilled and budget shortfalls. The end result is workers, including injured workers, the fabric of our economy are suffering needlessly.

With the foregoing reservations (there are more), I strongly support HCR 168 with the sincere goal of having a better system. Thank you for allowing me to submit this testimony.

Respectfully yours,



Dennis W. S. Chang  
Labor and Workers' Compensation Attorney